

Contract No. C05908  
Vendor No. 0000115064

**PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this 18<sup>th</sup> day of March, 2016, by and between the STATE OF NEW MEXICO, NEW MEXICO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "NMDOT or Department," acting through its Secretary, and Mothers Against Drunk Driving (MADD), hereinafter referred to as "Contractor."

**IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

**1. Scope of Work.**

The Contractor shall perform the following professional services:

- A. Monitor, gather information, and report back to the Department on a minimum of 250 impaired driving court cases per year, utilizing a court monitoring information storage system. The cases shall primarily be from courts in the counties of Bernalillo, Santa Fe, Doña Ana, McKinley, San Juan and Rio Arriba. However, the Department may request the offeror to monitor cases in other counties as well.
- B. Develop and implement a court monitoring information storage system. At minimum, the information stored shall include the following:
  - 1) basic case information, such as defendant's name and location of arrest;
  - 2) charges filed against the defendant, including citation number, case number, and circumstances surrounding the arrest;
  - 3) arraignment information, such as location, court date, plea entered and disposition;
  - 4) pretrial hearing information, such as location, court date;
  - 5) sanctions, including deferred sentences, DWI school or other alternative sentencing or condition the court may impose;
  - 6) comparisons to impaired driving sanctions in other jurisdictions within the State;
  - 7) name of court, judge, district attorney and defendant's counsel; and
  - 8) documentation of personal observations related to the case.

**The Offeror shall adhere to all storage, retention and security practices required by law for sensitive data, as well as any requirements prescribed by the Department.**

- C. Provide a minimum of one project manager, who will provide general oversight for the project and serve as the main point of contact for the Department.**
- D. Provide appropriate staff responsible for on-site monitoring of court proceedings.**
- E. Maintain management oversight and office staff sufficient to support the project manager and other staff assigned to this project.**
- F. Develop and implement a training curriculum for staff working on this project. The training curriculum must be approved by the Department in advance, and must at minimum include instruction on proper use of the collection system, information on current impaired driving laws, and information on general operations of courts.**
- G. Provide monthly reports on a format prescribed by the Department.**
- H. At minimum, schedule and attend quarterly meetings with Department staff.**
- I. Develop an evaluation plan to measure the effectiveness of this project.**
- J. Provide a cost proposal for the scope of services. The cost proposal shall include costs necessary to meet the minimum 250 court cases/year as well as a cost proposal to meet any additional requested court cases up to 500/year total.**

**Services shall be performed and be completed satisfactory to the Department with the instructions provided by the Department. The Contractor shall provide and charge only for those services requested by the Department. No services may be contracted except as agreed upon in advance by the parties to this Agreement.**

**Upon execution of this Agreement, the Contractor shall commence work at the Department's request and services shall conform to the description of services as set forth herein or as hereafter mutually agreed to in writing.**

**2. Payment Provisions.**

The Department shall compensate the Contractor based on the rates and costs set forth as follows:

a. **Rates.** The Contractor agrees to perform billable work at the following rates per hour:

Classification	Year 1	Year 2
Project Manager	\$38.51/hr.	\$39.66/hr.
Project Specialist	\$24.56/hr.	\$25.29/hr.
Project Administrator	\$20.07/hr.	\$20.67/hr.

b. **Compensation.** Total compensation during the term of this Agreement shall not exceed \$800,000.00, unless otherwise agreed to in writing by the parties hereto, which amount does not include applicable gross receipts taxes during the term of this Agreement. The Department will not compensate the Contractor for services or other deliverables provided prior to the full execution of the contract, after the expiration of the contract, or in excess of the maximum dollar amount of the contract, unless the maximum dollar amount is duly amended prior to providing the services or deliverables. The NMDOT shall reimburse the Contractor up to 100% for reasonable travel expenses upon the Department's receipt and approval of certified invoices from the appropriate vendors for airfare, lodging, car rental and meals.

c. **Payment of Invoice.** Payment shall be made to the Contractor upon receipt of a detailed invoice on a monthly or quarterly time frame applicable for satisfactory work completed and accepted by the Department, unless the Contractor receives verbal or written notice that the invoice is inadequate.

d. Acceptance. The Contractor's satisfactory completion of this Agreement shall be a prerequisite for final payment. Final payment, including any retainage, shall be made within thirty (30) days after the work has been approved and accepted by the Department's Secretary or his duly authorized representative.

Within fifteen days after the date the Department receives written notice from the Contractor that payment is requested for services or items of tangible personal property delivered on site and received, the Department shall issue a written certification of complete or partial acceptance or rejection of the services or items of tangible personal property. If the Department finds that the services or items of tangible personal property are not acceptable, it shall, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, provide to the Contractor a letter of exception explaining the defect or objection to the services or delivered tangible personal property along with details of how the Contractor may proceed to provide remedial action. Upon certification by the Department that the services or items of tangible personal property have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of certification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked.

After the thirtieth day from the date that written certification of acceptance is issued, late payment charges shall be paid on the unpaid balance due on the contract to the Contractor at the rate of one and a half (1½) percent per month. For purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, but has already certified that the services or items of tangible personal property have been received and accepted, payments shall be

tendered to the Contractor within five working days of receipt of funds from that funding agency.

e. Payment of Taxes. The Contractor is responsible for making payment of gross receipts taxes to the New Mexico Department of Taxation and Revenue unless Contractor is exempt from payment of taxes.

### **3. Approval of Contractor Personnel.**

Once work has started, changes of personnel will not be made by the Contractor without the prior written consent of the Department. Replacement of any Contractor personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Contractor will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld.

The Department shall retain the right to request the removal of any of the Contractor's personnel at any time.

### **4. Effective Date and Term.**

This Agreement shall not be effective until executed by the Secretary of the New Mexico Department of Transportation. The term of this Agreement is from the execution date of the Agreement and shall terminate two years after the execution date, unless terminated pursuant to Section Five of this Agreement. The Department shall have the option of extending the Agreement. In no event shall the total term of the Agreement, including extensions, exceed four (4) years.

**5. Termination.**

**The Department has the option of canceling this Agreement by giving thirty (30) days written notice to the Contractor. Upon receipt of the "Notice of Cancellation," the Contractor shall immediately suspend any further work unless otherwise directed by the Department in writing. By such termination neither party may nullify obligations already incurred for performance or failure to perform for the work rendered prior to the date of termination of this Agreement. However, neither party shall have any obligation to perform services or make payment for services rendered after such date of termination.**

**Either party may terminate the Agreement for cause based upon any material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach.**

**If within thirty (30) days after receipt of a written notice, the breaching party has not corrected the breach or, in the case of a breach which cannot be corrected in thirty (30) days, the breaching party has not begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effectively immediately. The non-breaching party shall retain any and all other remedies available to it under law.**

**6. Status of Contractor.**

**The Contractor and its agents and employees are independent Contractors performing professional services for the Department and are not employees of the Department.**

**The Contractor and its agents and employees shall not have use of Department State vehicles or any other benefits afforded the Department employees as a result of this Agreement.**

**7. Permits, Licenses, and Insurance.**

**Contractor warrants, covenants and represents that Mother Against Drunk Driving (MADD) is properly organized under the laws of the State of New Mexico, and is in good standing to do business in the State of New Mexico. The Contractor shall procure all permits and licenses, and insurance as required by law and pay all charges, fees, royalties, and give all notices necessary and incidental to the due and lawful prosecution of the work. The Contractor agrees to comply with state laws and rules pertaining to workers' compensation insurance coverage for its employees. If Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the Agreement may be canceled effective immediately.**

**8. Assignment.**

**The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without prior written approval of the Department.**

**9. Subcontracting.**

**The Contractor shall not subcontract any portion of the services to be performed under this Agreement without prior written approval of the Department.**

**10. Records and Audit.**

**The Contractor agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and to make such materials**

available at their respective offices at all reasonable times during the Agreement period and for five (5) years from the date of final payment under the Agreement for inspection by the State.

**11. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of this Agreement. If sufficient appropriations and authorizations are not made by the Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by the Department to the Contractor.

The Department is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the Department. The Department's decision as to whether its funds are available shall be accepted by the Contractor and shall be final.

**12. Release.**

The Contractor, upon final payment of the amount due under this Agreement, releases the Department, its officers, and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico, unless the Contractor has written authority to do so, and then only within the strict limits of that authority.



**13. Confidentiality.**

**Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior written approval by the Department.**

**14. The Product of Service; Copyright.**

**All materials developed or acquired by the Contractor shall become the property of the State of New Mexico and shall be delivered to the Department no later than the termination date of this Agreement. Nothing produced in, whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.**

**However, it is understood that some of the materials utilized in this project have previously been copyrighted by the Contractor.**

**15. Conflict of Interest.**

**The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Contractor shall comply with any applicable provisions of the New Mexico Governmental Conduct Act, the New Mexico Financial Disclosures Act and the campaign disclosure provisions of the Procurement Code. The Contractor has completed a Campaign Contributions Disclosure Form which is attached to this Agreement as Exhibit 1.**

**16. Equal Opportunity Compliance.**

**The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the Contractor is found to not be in compliance with these requirements during the term of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.**

**17. Civil Rights Laws and Regulations Compliance.**

**The Department and Contractor shall comply with all federal, state and local laws and ordinances applicable to the work called for herein. The Department and Contractor further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, Executive Order 12898, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by the Department of Labor regulations (41 CFR 60). Accordingly, 49 CFR 21 is applicable to this Agreement and incorporated herein by reference.**

**18. New Mexico Employees Health Coverage**

1. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to:

(a) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2008 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed one million dollars or;

(b) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2009 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$500,000 dollars or;

(c) have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees no later than July 1, 2010 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

2. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

3. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information:

<http://insurenemexico.state.nm.us/>.

4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the offeror reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000, \$500,000 or \$1,000,000, depending on the dollar value threshold in effect at that time.

**19. Employee Pay Equity Reporting**

Contractor agrees if it has ten (10) or more employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) either within thirty (30) calendar days of contract award (if the contract did not result from a solicitation) or on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration (if the contract did result from a solicitation).

**For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the required form annually within thirty (30) calendar days of the annual contract anniversary date of the initial submittal date and, if more than 180 calendar days has elapsed since submittal of the last report, at the completion of the contract.**

**Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.**

**Contractor also agrees to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.**

**Contractor shall not be required to report more frequently than annually unless more than 180 calendar days has elapsed since submittal of the last report and the contract has reached completion. The requirement for reporting at contract completion shall not apply in the case of a one-time fulfillment of a purchase order.**

**20. Disadvantaged Business Enterprise (DBE) Program and Policy.**

**a. Recipient/Contractor Assurances: All contracts and subcontracts applicable to the work called for herein shall include the following assurances:**

- (1) Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR 26.**

**The Department shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and the administration of DOT-assisted contracts. The Department's DBE Program, as required by 49 CFR 26 and as approved by DOT, is incorporated herein by reference and made part of this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the DOT may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).**

**(2) The recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The recipient shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the recipient to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Department deems appropriate.**

**b. DBE Program Obligations: This Agreement does not have a specific DBE goal assigned to it. However, NMDOT encourages the Contractor to facilitate small business and DBE participation on this contract and to take all reasonable steps to eliminate obstacles that may preclude their participation.**

**c. Provision of DBE Program Information:** The Contractor shall provide any DBE related information or data requested by the NMDOT DBE Program to the Department's project manager or to the Department's Office of Equal Opportunity Programs.

**21. Notice.**

The New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, or kickbacks in the procurement of this Agreement. In addition, the New Mexico Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, as amended, imposes civil and criminal penalties for its violation.

**22. Applicable Law.**

The Laws of the State of New Mexico shall govern this Agreement.

**23. Contractor's Liability.**

Contractor shall defend, indemnify and hold harmless the Department, acting through its agents, representatives and employees, from and against liability, claims, damages, losses or expenses (including but not limited to attorney's fees, court costs and the cost of appellate proceedings) arising out or resulting from the negligence, act, omission or default of the Contractor, its agents, representatives or employees; provided that such indemnification shall not extend to liability, claims, damages, losses or expenses, including attorney's fees arising out of: (1) The preparation or approval of maps, drawings, opinions, reports, surveys, change orders, design or specifications by the Department or the agents or employees of the Department:

or (2) The giving of or failure to give directions or instructions by the Department, where such giving of or failure to give directions or instructions by the Department is the primary cause of bodily injury to persons or damages to property.

**24. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

**25. Merger.**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement.

No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

**26. Nation Highway Traffic Safety Administration Standards.**

See Attached Exhibit 2.

**27. Amendment.**

This Agreement shall not be altered, changed or amended except by an instrument in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year written above.

NEW MEXICO DEPARTMENT  
OF TRANSPORTATION

BY   
CABINET SECRETARY OR DESIGNEE

DATE 18 MARCH 2016

Mothers Against Drunk Driving (MADD)  
CONTRACTOR

BY \_\_\_\_\_  
CHIEF FINANCIAL OFFICER

DATE \_\_\_\_\_

Approved as to form and legal sufficiency by the Department's Office of General Counsel.

BY   
ASSISTANT GENERAL COUNSEL

DATE 3-17-16

I hereby certify that Mothers Against Drunk Driving (MADD), tax identification number 03-281504-002, is registered with the New Mexico Taxation and Revenue Department for payment of gross receipt taxes.

TAXATION AND REVENUE DEPARTMENT

BY 

DATE 3.18.16



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year written above.

NEW MEXICO DEPARTMENT  
OF TRANSPORTATION

BY \_\_\_\_\_ DATE \_\_\_\_\_  
CABINET SECRETARY OR DESIGNEE

Mothers Against Drunk Driving (MADD)  
CONTRACTOR

BY  DATE 3/17/16  
CHIEF FINANCIAL OFFICER

Approved as to form and legal sufficiency by the Department's Office of General Counsel.

BY \_\_\_\_\_ DATE \_\_\_\_\_  
ASSISTANT GENERAL COUNSEL

I hereby certify that Mothers Against Drunk Driving (MADD), tax identification number 03-281504-002, is registered with the New Mexico Taxation and Revenue Department for payment of gross receipt taxes.

TAXATION AND REVENUE DEPARTMENT

BY \_\_\_\_\_ DATE \_\_\_\_\_

## EXHIBIT 1

### CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, any prospective contractor seeking to enter into a contract with any state agency or local public body **for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources** must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body may cancel a solicitation or proposed award for a proposed contract pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 of the Procurement Code if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

**THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

**“Applicable public official”** means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

**“Campaign Contribution”** means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official’s behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

**“Family member”** means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor.

**“Pendency of the procurement process”** means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

**“Prospective contractor”** means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or a small purchase contract.

**“Representative of a prospective contractor”** means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any: \_\_\_\_\_  
(Completed by State Agency or Local Public Body)

**DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s) \_\_\_\_\_

Nature of Contribution(s) \_\_\_\_\_

Purpose of Contribution(s)

\_\_\_\_\_  
\_\_\_\_\_

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature


\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

--OR--

**NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE** to an applicable public official by me, a family member or representative.

  
Signature

  
Date

  
Title (Position)

## **EXHIBIT 2**

### **NONDISCRIMINATION**

(applies to Contractors as well as States)

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), which prohibits discrimination on the basis of race, color or national origin (and 49 CFR Part 21); (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Americans with Disabilities Act of 1990 (Pub. L. 101-336), as amended (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disabilities (and 49 CFR Part 27); (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Civil Rights Restoration Act of 1987 (Pub. L. 100-259), which requires Federal-aid recipients and all subrecipients to prevent discrimination and ensure nondiscrimination in all of their programs and activities; (f) the Drug Abuse Office and Treatment Act of 1972 (Pub. L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub. L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (h) Sections 523 and 527 of the Public Health Service Act of 1912, as amended (42 U.S.C. 290dd-3 and 290ee-3), relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968, as amended (42 U.S.C. 3601, et seq.), relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to the application.

### **BUY AMERICA ACT**

(applies to Contractors as well as States)173

The State will comply with the provisions of the Buy America Act (49 U.S.C. 5323(j)), which contains the following requirements:

Only steel, iron and manufactured products produced in the United States may be purchased with Federal funds unless the Secretary of Transportation determines that such domestic purchases would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. Clear justification for the purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation.

### **POLITICAL ACTIVITY (HATCH ACT)**

(applies to Contractors as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508) which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

## **CERTIFICATION REGARDING FEDERAL LOBBYING**

(applies to Contractors as well as States)

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## **RESTRICTION ON STATE LOBBYING**

(applies to Contractors as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

## **CERTIFICATION REGARDING DEBARMENT AND SUSPENSION**

(applies to Contractors as well as States)

**Instructions for Primary Certification**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an

explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and coverage sections of 49 CFR Part 29. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Instructions for Lower Tier Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definition and Coverage sections of 49 CFR Part 29. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and



**Voluntary Exclusion -- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions. (See below)**

**7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.**

**8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.**

**9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:**

**1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.**

**2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.**